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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

NEIL ALLEN SILVERIO
1374 Weaverville St.
Chula Vista, CA 91913

Respondent.

Case No. 1H-2008-204

OAH No.

STATEMENT OF ISSUES

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about April 7, 2008, the Respiratory Care Board of California, Department of Consumer Affairs received an application for Respiratory Care Practitioner License from Neil Allen Silverio (Respondent). On or about January 29, 2008, respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on June 27, 2008.

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JURISDICTION

3. This Statement of Issues is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3732 of the Code states:

"(a) The board shall investigate an applicant for a license, before a license is issued, in order to determine whether or not the applicant has the qualifications required by this chapter.

"(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

7. Section 3750 of the Code states:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

"...."

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

"...."

"(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or

1 attempting to violate, directly or indirectly, or assisting in or abetting the violation
2 of, or conspiring to violate any provision or term of this chapter or of any provision
3 of Division 2 (commencing with Section 500).

4 “....”

5 “(j) The commission of any fraudulent, dishonest, or corrupt act which is
6 substantially related to the qualifications, functions, or duties of a respiratory care
7 practitioner.

8 “....”

9 8. California Code of Regulations, title 16, section 1399.370, states:

10 “For the purposes of denial, suspension, or revocation of a license, a crime
11 or act shall be considered to be substantially related to the qualifications, functions
12 or duties of a respiratory care practitioner, if it evidences present or potential
13 unfitness of a licensee to perform the functions authorized by his or her license or
14 in a manner inconsistent with the public health, safety, or welfare. Such crimes or
15 acts shall include but not be limited to those involving the following:

16 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
17 abetting the violation of or conspiring to violate any provision or term of the Act.

18 “(b) Conviction of a crime involving fiscal dishonesty theft, or larceny.

19 “....”

20 COST RECOVERY

21 9. Section 3753.5, subdivision (a), of the Code states:

22 "In any order issued in resolution of a disciplinary proceeding
23 before the board, the board or the administrative law judge may direct any
24 practitioner or applicant found to have committed a violation or violations
25 of law to pay to the board a sum not to exceed the costs of the investigation
26 and prosecution of the case."

27 10. Section 3753.7 of the Code states:

28 "For purposes of the Respiratory Care Practice Act, costs of prosecution

1 shall include attorney general or other prosecuting attorney fees, expert witness fees, and
2 other administrative, filing, and service fees."

3 11. Section 3753.1, subdivision (a), of the Code states:

4 "An administrative disciplinary decision imposing terms of probation may
5 include, among other things, a requirement that the licensee-probationer pay the monetary
6 costs associated with monitoring the probation. "

7 **FIRST CAUSE FOR DENIAL OF APPLICATION**

8 **(Conviction of a Crime)**

9 12. Respondent's application is subject to denial under sections 3732,
10 3750, subdivision (d), and California Code of Regulations, title 16, section 1399.370,
11 subdivision (b), in that respondent was convicted of a crime substantially related to the
12 qualifications, functions or duties of a respiratory care practitioner. The circumstances are
13 as follows:

14 a. On or about November 11, 2006, respondent and some friends
15 broke into a vehicle and attempted to steal the contents. The owner of the vehicle
16 confronted respondent and during the ensuing melee, respondent struck the owner in the
17 face. Ultimately, police were called and respondent was arrested for a violation of Penal
18 Code section 211, robbery.

19 b. On or about December 15, 2006, a felony criminal complaint was
20 filed in the Superior Court of the State of California, for the County of San Diego, case
21 number SCD202906, charging respondent with robbery in violation of Penal Code section
22 211, receiving stolen property in violation of Penal Code section 496, subdivision (a),
23 burglary in violation of Penal Code section 459, and grand theft of personal property in
24 violation of Penal Code section 487, subdivision (a).

25 c. On or about January 30, 2007, pursuant to a plea bargain,
26 respondent pled guilty to robbery in violation of Penal Code section 211. Imposition of
27 sentence was suspended and respondent was placed on 3 years formal probation, ordered
28 to spend 180 days in custody through a probation work furlough, pay fines and restitution,

1 and complete 20 days of community service.

2 SECOND CAUSE FOR DENIAL OF APPLICATION

3 (Commission of Fraudulent, Dishonesty, and/or Corrupt act)

4 13. Respondent's application is subject to denial under sections 3732
5 and 3750, subdivision (j), of the Code in that he committed a fraudulent, dishonest, and/or
6 corrupt act as described in paragraph 12, above, which is hereby incorporated by reference
7 and realleged as if set forth hereinafter.

8 PRAYER

9 WHEREFORE, Complainant requests that a hearing be held on the matters
10 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

11 1. Denying the application of Neil Allen Silverio for a Respiratory
12 Care Practitioner License;

13 2. Directing Neil Allen Silverio to pay the Respiratory Care Board of
14 California the costs of the investigation and enforcement of this case, and if placed on
15 probation, the costs of probation monitoring; and,

16 3. Taking such other and further action as deemed necessary and
17 proper.

18
19 DATED: August 18, 2008

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22 Original signed by Christine Molina for:
23 STEPHANIE NUNEZ
24 Executive Officer
25 Respiratory Care Board of California
26 Department of Consumer Affairs
27 State of California
28 Complainant